

Regular Session, 2009

HOUSE BILL NO. 841

BY REPRESENTATIVE HONEY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

WORKERS COMPENSATION: Provides relative to workers' compensation

1 AN ACT

2 To amend and reenact R.S. 23:1123, 1172.2(E), 1201(A), 1378(A)(1), (2),
3 (3)(a)(introductory paragraph) and(b)(introductory paragraph)(7) and to repeal R.S.
4 23:1201.1, relative to workers' compensation; to provide for an examination of an
5 injured employee when certain disputes arise; to provide for the prompt reporting of
6 certain information relative to payment of workers' compensation premiums which
7 may be considered false, fraudulent, or misleading; to provide for payors and
8 insurers to make weekly indemnity payments by electronic funds transfer; to repeal
9 provisions requiring that workers' compensation indemnity payments be mailed; to
10 provide for the determination of the liability of the Second Injury Fund; and to
11 provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 23:1123, 1172.2(E), 1201(A), 1378(A)(1), (2),(3)(a)(introductory
14 paragraph) and (b)(introductory paragraph)(7) are hereby amended and reenacted to read as
15 follows:

16 §1123. Disputes as to ~~physical condition, capacity to work, or current medical~~
17 treatment of employee; examination under supervision of the director

18 If any dispute arises as to the condition of the employee, capacity to work,
19 or the current medical treatment for the employee, the director, upon application of
20 any party, shall order an examination of the employee to be made by a medical

1 practitioner selected and appointed by the director. The medical examiner shall
2 report his conclusions from the examination to the director and to the parties and
3 such report shall be prima facie evidence of the facts therein stated in any subsequent
4 proceedings under this Chapter.

5 * * *

6 §1172.2. Unlawful practices

7 * * *

8 E. (1)(a) Any person, insurer, or self-insurance fund having knowledge of
9 or who believes that a false, fraudulent, or misleading statement is knowingly made
10 or is knowingly omitted for the purpose of avoiding, delaying, or diminishing the
11 amount of payment of any workers' compensation premium shall, within sixty days
12 of notice of such statement or omission, send to the office of workers' compensation
13 administration, on a form prescribed by the director, the information requested and
14 such additional information as may be requested by the office of workers'
15 compensation administration.

16 (b) The office of workers' compensation administration shall review such
17 reports and select such acts of misrepresentation as, in its judgment, may require
18 further investigation.

19 (c) The office of workers' compensation administration shall then cause an
20 independent examination of the facts surrounding such acts to be made to determine
21 the extent, if any, to which fraud, deceit, or intentional misrepresentation of any kind
22 exists.

23 (d) The office of workers' compensation administration shall report any
24 alleged violations of law which its investigations disclose to the appropriate licensing
25 agency and prosecuting authorities having jurisdiction with respect to such violation.

26 (2) No person or entity acting without malice, fraudulent intent, reckless
27 disregard for the truth, or bad faith, shall be subject to civil liability for libel, slander,
28 or any other relevant tort, and no civil cause of action of any nature shall exist
29 against such person or entity by virtue of the filing of reports or furnishing of other

1 information, either orally or in writing, relative to a violation by any employer of the
2 provisions of this Section.

3 ~~(2)~~(3) The grant of immunity provided by this Subsection shall not abrogate
4 or modify in any way any statutory or other privilege or immunity otherwise enjoyed
5 by such person or entity.

6 ~~(3)~~ (4) Any person or entity entitled by this Subsection to immunity from
7 civil liability shall also be entitled to an award of attorney fees and costs if they are
8 the prevailing party in a civil suit and the party bringing the action was not
9 substantially justified in doing so. For purposes of this Section, a proceeding is
10 "substantially justified" if it had a reasonable basis in law or fact at the time it was
11 initiated.

12 * * *

13 §1201. Time and place of payment; failure to pay timely; failure to authorize;
14 penalties and attorney fees

15 A.(1) Payments of compensation under this Chapter shall be paid as near as
16 may be possible, at the same time and place as wages were payable to the employee
17 before the accident; however, when the employee is not living at the place where the
18 wages were paid, or is absent therefrom, such payments shall be made by mail, upon
19 the employee giving to the employer a sufficient mailing address. However, a longer
20 interval, not to exceed one month, may be substituted by agreement without approval
21 of the director. An interval of more than one month must be approved by the
22 director.

23 (2) Notwithstanding the requirement to make payments by mail in Paragraph
24 (1) of this Subsection, electronic transfer of funds, including but not limited to direct
25 deposit or use of a debit card, is an appropriate method of payment of compensation
26 under this Chapter. Where a payor or insurer elects to issue debit cards and makes
27 weekly payments by way of electronic funds transfers, an injured worker represented
28 by an attorney may elect to have his weekly indemnity check deposited directly into
29 his attorney's trust account. Where such an election is made, within forty-eight hours

of the direct deposit, the payor or insurer shall provide notice by way of email only
to the injured worker's attorney containing a list of all claims and amounts included
in the direct deposit.

* * *

§1378. Determination of liability of fund

A. An employer operating under the provisions of this Chapter who knowingly employs or knowingly retains in his employment an employee who has a permanent partial disability, as defined in Subsection F of this Section, shall be reimbursed from the Second Injury Fund as follows:

(1)(a) For injuries occurring before July 1, 2004, and on or after July 1, ~~2009~~ 2011, if an employee who has a permanent partial disability incurs a subsequent injury arising out of and in the course of his employment resulting in liability for disability due to the merger of the subsequent injury with the preexisting permanent partial disability, the employer or, if insured, his insurer, in the first instance, shall pay all compensation provided in this Chapter, but the employer or, if insured, his insurer thereafter shall be reimbursed from the Second Injury Fund for all weekly compensation payments payable after the first one hundred four weeks of payments. Such payments shall be reimbursed provided they are submitted to the board within one year of the approval for reimbursement or within one year of the payment of such weekly compensation payments, whichever occurs later.

(b) For injuries occurring on or after July 1, 2004, and before July 1, ~~2009~~ 2011, if an employee who has a permanent partial disability incurs a subsequent injury arising out of and in the course of his employment resulting in liability for disability due to the merger of the subsequent injury with the preexisting permanent partial disability, the employer or, if insured, his insurer thereafter shall be reimbursed from the Second Injury Fund for all weekly compensation payments payable after the first one hundred thirty weeks of payments. Such payments shall be reimbursed provided they are submitted to the board within one year of the

1 approval for reimbursement or within one year of the payment of such weekly
2 compensation payments, whichever occurs later.

3 (2)(a) For injuries occurring before July 1, 2004, and on or after July 1, ~~2009~~
4 2011, if an employer becomes liable for the payment of death benefits under the
5 provisions of this Chapter, said employer or, if insured, his insurer shall be entitled
6 to reimbursement from the workers' compensation Second Injury Fund for all death
7 benefit payments payable after the first one hundred seventy-five weeks of payments,
8 provided that death benefits are actually paid by said employer or his insurer under
9 the provisions of this Chapter, and provided that the deceased employee of the
10 employer died as a result of a combination of a preexisting permanent partial
11 disability and a subsequent compensable injury or the employee's death would not
12 have occurred but for the preexisting permanent partial disability. Such payments
13 shall be reimbursed provided they are submitted to the board within one year of the
14 approval for reimbursement or within one year of the payment of such death benefits,
15 whichever occurs later.

16 (b) For injuries occurring on or after July 1, 2004, and before July 1, ~~2009~~
17 2011, if an employer becomes liable for the payment of death benefits under the
18 provisions of this Chapter, said employer or, if insured, his insurer shall be entitled
19 to reimbursement from the workers' compensation Second Injury Fund for all death
20 benefit payments payable after the first one hundred thirty weeks of payments,
21 provided that death benefits are actually paid by the employer or his insurer under
22 the provisions of this Chapter, and provided that the deceased employee of the
23 employer died as a result of a combination of a preexisting permanent partial
24 disability and a subsequent compensable injury or the employee's death would not
25 have occurred but for the preexisting permanent partial disability. Such payments
26 shall be reimbursed provided they are submitted to the board within one year of the
27 approval for reimbursement or within one year of the payment of such death benefits,
28 whichever occurs later.

1 (3)(a) For injuries occurring before July 1, 2004, and on or after July 1, ~~2009~~
2 2011, if an employee who has a permanent partial disability incurs a subsequent
3 injury arising out of and in the course of his employment resulting in liability for
4 disability due to the merger of the subsequent injury with the preexisting permanent
5 partial disability, the employer or, if insured, the insurer shall be reimbursed from
6 the Second Injury Fund for medical expenses actually paid and payable in
7 accordance with R.S. 23:1203 as follows:

8 * * *

9 (b) For injuries occurring on or after July 1, 2004, and before July 1, ~~2009~~
10 2011, if an employee who has a permanent partial disability incurs a subsequent
11 injury arising out of and in the course of his employment resulting in liability for
12 disability due to the merger of the subsequent injury with the preexisting permanent
13 partial disability, the employer or, if insured, the insurer shall be reimbursed from
14 the Second Injury Fund for medical expenses actually paid and payable in
15 accordance with R.S. 23:1203 as follows:

16 * * *

17 (7) Upon the board's approval of a claim for reimbursement, and on an
18 annual basis thereafter, the insurer shall report to the board an estimate of the future
19 medical and indemnity liability to the injured employee on a form promulgated by
20 the director. The report shall be submitted to the board each year at the same time
21 the annual report required by R.S. 23:1291.1 is submitted to the office of workers'
22 compensation administration.

23 (a) For injuries occurring before July 1, 2004, and on or after July 1, ~~2009~~
24 2011, upon the board's approval of a claim for reimbursement, the insurer shall
25 immediately certify to the board that the medical reserve has been reduced to no
26 more than seven thousand five hundred dollars, and the weekly disability benefits
27 (indemnity) reserve does not exceed one hundred four weeks of indemnity. In the
28 event of a death claim, the weekly benefits reserve will be no more than one hundred
29 seventy-five weeks. No reimbursement will be made to the insurer unless such

1 insurer complies with the provisions of this Paragraph. The Louisiana Insurance
 2 Guaranty Association shall be entitled to reimbursement, but only to the extent of the
 3 proportion of the Second Injury Fund assessment paid by insurance companies.

4 (b) For injuries occurring on or after July 1, 2004, and before July 1, ~~2009~~
 5 2011, upon the board's approval of a claim for reimbursement, the insurer shall
 6 immediately certify to the board that the medical reserve has been reduced to no
 7 more than twenty-five thousand dollars, and the weekly disability benefits
 8 (indemnity) reserve does not exceed one hundred thirty weeks of indemnity. In the
 9 event of a death claim, the weekly benefits reserve will be no more than one hundred
 10 thirty weeks. No reimbursement will be made to the insurer unless such insurer
 11 complies with the provisions of this Paragraph. The Louisiana Insurance Guaranty
 12 Association shall be entitled to reimbursement, but only to the extent of the
 13 proportion of the Second Injury Fund assessment paid by insurance companies.

14 * * *

15 Section 2. R.S. 23:1201.1 is hereby repealed in its entirety.

16 Section 3. This Act shall become effective upon signature by the governor or, if not
 17 signed by the governor, upon expiration of the time for bills to become law without signature
 18 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 19 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 20 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Honey

HB No. 841

Abstract: Requires the director of the office of workers' compensation administration to order an independent medical examination in certain circumstances.

Present law (R.S. 23:1123) provides for the duty of the director to order an independent medical examination by a medical practitioner selected and appointed by the director when a dispute arises as to the condition of an injured employee.

Proposed law retains present law and further requires the director, upon application of any party, to order an independent medical examination when a dispute arises as to the injured employee's capacity to work or his current medical treatment.

Present law (R.S. 23:1172.2) provides that no person or entity acting without malice, fraudulent intent, reckless disregard for the truth, or bad faith shall be liable to another by virtue of the filing of reports or furnishing other information relative to a violation by an employer of the provisions of the present law.

Proposed law retains present law but places an affirmative burden on any person, insurer, or members of self-insurance fund who believes that a false, fraudulent, or misleading statement has been knowingly made or has been knowingly omitted with the purpose of affecting the payment of any workers' compensation premium.

Proposed law further requires that such an entity shall report such statement or omission within 60 days to the office of workers' compensation administration, at which time the office shall review such reports and determine which reports merit further investigation.

Proposed law requires the office to provide an independent examination of the facts surrounding the report. Any alleged violations of law disclosed by an independent examination of the facts shall be reported to the appropriate licensing agency and the proper prosecuting authority.

Present law (R.S. 23:1201) states that workers' compensation payments shall be made by mail.

Proposed law retains the mailing of payments as permissive, but allows the electronic transfer of funds by methods including but not limited to direct deposit and debit cards.

Proposed law provides that if the payer or insurer elects to issue debit cards, the injured worker may opt to have his weekly indemnity payment paid directly into his attorney's trust account. Proposed law provides that if such an election is made, within 48 hours of each deposit, the payer or insurer shall notify the attorney of the deposit and shall list all claims and amounts included in the deposit.

Present law provides that for injuries occurring before July 1, 2004, and on or after July 1, 2009, the employer operating under the provisions of present law who knowingly employs or knowingly retains in his employment an employee who has a permanent partial disability, as defined in present law, shall be reimbursed from the Second Injury Fund for all weekly compensation payments payable after the first 104 weeks of payments provided they are submitted to the board within one year of approval for reimbursement or within one year of the payment of such weekly compensation payments, whichever occurs later.

Proposed law retains present law but changes the time period from July 1, 2009, to July 1, 2011.

Present law also provides that for injuries occurring between July 1, 2004, and July 1, 2009, an employer who retains in his employment an employee who has a permanent partial disability shall be reimbursed from the Second Injury Fund for all weekly compensation payments payable after the first 130 weeks of payment provided they are submitted to the board within one year of approval for reimbursement or within one year of the payment of such weekly compensation payments, whichever occurs later.

Proposed law retains present law but changes the time period from July 1, 2009, to July 1, 2011.

Present law provides that for injuries occurring before July 1, 2004, and on or after July 1, 2009, an employer operating under the provisions of present law who knowingly employs

or knowingly retains in his employment an employee who has a permanent partial disability, as defined in present law, shall be reimbursed from the Second Injury Fund for all death benefit payments payable after the first 175 weeks of payments, provided that death benefits are actually paid by the employer or his insurer under the provisions of present law, and provided that the deceased employee of the employer died as a result of a combination of a preexisting permanent partial disability and a subsequent compensable injury or the employee's death would not have occurred but for the preexisting permanent partial disability. Payments shall be reimbursed provided they are submitted to the board within one year of the approval for reimbursement or within one year of the payment of such death benefits, whichever occurs later.

Proposed law retains present law but changes the time period from July 1, 2009, to July 1, 2011.

Present law also provides that for injuries occurring between July 1, 2004, and July 1, 2009, in the event an employer becomes liable for the payment of death benefits, he shall be entitled to reimbursement for all death benefit payments payable after the first 130 weeks, provided that the payments are actually paid by the employer or his insurer and that the deceased employee died as a result of a combination of a preexisting permanent partial disability and a subsequent compensable injury or that the employee's death would not have occurred but for the preexisting permanent partial disability. Payments must be submitted to the board for reimbursement within one year of approval for reimbursement or within one year of the payment of such death benefits, whichever occurs later.

Proposed law retains present law but changes the time period from July 1, 2009, to July 1, 2011.

Present law provides that for injuries occurring before July 1, 2004, and on or after July 1, 2009, an employer operating under the provisions of present law who knowingly employs or knowingly retains in his employment an employee who has a permanent partial disability, as defined in present law, shall be reimbursed from the Second Injury Fund for all medical expenses actually paid and payable in accordance with present law.

Proposed law retains present law but changes time period from July 1, 2009, to July 1, 2011.

Present law provides that for injuries occurring before July 1, 2004, and on or after July 1, 2009, upon the board's approval of a claim for reimbursement, the insurer shall immediately certify to the board that the medical reserve has been reduced to no more than \$7,500, and the weekly disability benefits (indemnity) reserve does not exceed 104 weeks of indemnity. In the event of a death claim, the weekly benefits reserve will be no more than 175 weeks.

Proposed law retains present law but changes the time period from July 1, 2009, to July 1, 2011.

Present law provides that for injuries occurring between July 1, 2004, and July 1, 2009, upon the board's approval for a claim for reimbursement, the insurer must immediately certify to the board that the medical reserve has been reduced to no more than \$25,000 and the weekly disability benefits reserve does not exceed 130 weeks of indemnity. For death claims, the weekly benefits reserve will be no more than 130 weeks. LIGA shall be entitled to reimbursement, but only to the extent of the proportion of the Second Injury Fund assessment paid by insurance companies.

Proposed law retains present law but changes the time period from July 1, 2009, to July 1, 2011.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S.23:1123, R.S.23:1172.2(E), R.S.23:1201(A), R.S.23:1378(A)(1), (2), (3)(a)(intro. para.) and (b)(intro. para.)(7); Repeals R.S.23:1201.1)